

Chapter 15 – Nonprofit Rent Increases, gives additional guidance on Mark-Up-To-Market for Nonprofit Transfers and the Budget-Based Rent Increase for Capital Repairs.

Throughout this chapter they will be referred to as the Transfer Program and the Capital Needs Program.

Transfer Program

Under the Transfer Program HUD will use its discretion to mark rents up to market to facilitate a change in ownership from a for-profit owner or limited-dividend owner to a nonprofit;

or from one nonprofit to another nonprofit owner.

The current and prospective owners may not be affiliated entities.

Owners applying under this program should renew their contract under Option 1.

Capital Needs Program

Under the Capital Needs Program, HUD will permit a Section 8 budget-based rent increase for nonprofit projects to perform capital improvements that will maintain the long-term financial and physical viability of the project when current rents are not sufficient.

Owners applying under this program should renew their contract under Option 2.

Both of these programs share a number of characteristics, such as:

Rent increases are capped at the lesser of comparable market rents or 150% of the FMR, less the interest rate subsidy adjustment factor (IRP), if applicable.

- **Requirement of a 20-year use agreement, which requires the owner to accept any Section 8 contract renewal if offered by HUD. If the project has an existing Use Agreement the term must be extended for an additional 20-years.**
- **The same property eligibility criteria, such as the project may have;**
 1. **Comparable Market Rents below 100% of the FMR potential.**
 2. **A low and moderate income use restriction that cannot be eliminated by unilateral action by the owner.**
- **A minimum contract term of 5-years.**
- **The Basic Renewal Contract must be used. The existing Section 524 Contract(s) may be terminated early in order to take advantage of these programs.**
- **Owners must provide a rent comparability study at the end of each 5 -year term.**

Transfer Program

In addition to the characteristics that apply to both programs, the following criteria applies only to the Transfer Program.

- **Current owners that are subject to administrative sanctions; or not in compliance with the Regulatory Agreement, Note, and Mortgage; and that are not current with their debt service may participate in the Transfer Program. Although, owners may not receive funds from the transaction until all costs associated with bringing the project to an acceptable standard are covered.**
- **To be approved for a Section 8 contract rent increase the owner must submit a letter of intent to sell the project to an eligible nonprofit. The Project Manager will verify that there is no affiliation between the current and prospective entities.**
- **Tenants living in these non-Section 8 units will not have their rents increased as a result of the transaction.**
- **The finalized new rents will not be effective until the transfer is approved.**
- **To encourage nonprofit transfers, HUD will waive the transfer fee.**

Capital Needs Program

In addition to the characteristics that apply to both programs, the following criteria applies only to the Capital Needs Program.

- **The project must have a physical inspection performed by REAC with a score greater than 30.**
- **The nonprofit owner must be in good standing and not subject to administrative sanctions.**
- **The nonprofit owner must be in compliance with the terms of the Regulatory Agreement, Note and Mortgage.**
- **The project must be current in debt service and all payments, including the Reserve Fund for Replacement.**
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The unassisted units in the project will be subject to the following:

- **Tenants living in these non-Section 8 units may have their rents increased by up to 10 percent as a result of the transaction.**
- **Restrictions on rent increases for the non-Section 8 units do not apply for budget-based rent increases that are approved for regular operating expenses.**

A Section 8 contract rent increase may be approved for the following:

- **Capital Needs – including debt financing.**
- **To recapitalize the replacement reserve escrow.**
- **To provide a 6 percent return on initial equity.**

To be approved for a Section 8 contract rent increase the following information must be submitted by the owner:

- 1. A proposed budget.**
- 2. A Project Capital Needs Assessment (PCNA) or Comprehensive Needs Assessment (CNA).**
- 3. A financing plan for funding the repair, replacement, and major maintenance needs of the project.**
- 4. An estimate of the initial deposit to the replacement reserve, if any and the estimated monthly deposit to the replacement reserve for the next 10 years.**

If there is new debt in the project the owner must also provide the following:

- **A Physical Inspection Report**
- **A Statement of Resources and Needs**

The finalized new rents for the Capital Needs Program will not be effective until:

- **For modest repair or rehabilitation - not until the Project Needs Assessment is done and financing is approved.**
- **For substantial rehabilitation with a construction loan - not until all of the work is completed and accepted.**

Limitations on Distributions

The Department is in the process of finalizing a rule that will allow nonprofit owners/mortgagors to become eligible for increased distributions as long as they agree to renew their Section 8 project-based assistance contract. We will notify you with further guidance once the Final Rule has been issued.

Presently, by regulation (24CFR 880,205, 881,205, 883,306 and 24 CFR 236.10) nonprofit owners/mortgagors are not allowed to receive distributions from the project. However, nonprofit owners/mortgagors may submit a waiver to request the 6 percent distribution for both the Transfer Program or the Capital Needs Program. Waivers will be granted on a case-by-case basis.

In the waiver request, the owner must establish good cause through a discussion of reasons and show how the distributions will cause the nonprofit owner/mortgagor to participate in the Section 8 program, and how the funds will be used to increase more affordable housing. These funds may be retained for non-project use for those nonprofit purposes established in the organization's articles of incorporation, charter, etc. or pledged to the repayment of surplus cash or residual receipts notes given in favor of secondary financing.